

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES GILMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:23-cv-00082-MPB-MKK
	)	
SAMUEL BYRD Dr. MD,	)	
CHELSEA PEARSON Nurse RN,	)	
BARBARA RIGGS Nurse RN Nursing Sup.,	)	
LEANN MURRY Nurse RN,	)	
EMILY ENRIQUEZ Nurse,	)	
KAYLA KELLUMS Nurse,	)	
	)	
Defendants.	)	

Order Screening Third Amendment Complaint and Directing Further Proceedings

Plaintiff James Gilman is an inmate at Wabash Valley Correctional Facility. The Court previously screened his amended complaint and second amended complaint and allowed Eighth Amendment deliberate indifference claims to proceed against Defendants Samuel Byrd, Chelsea Pearson, Barbara Riggs, Leann Murry, Emily Enriquez, and Kayla Kellums. Dkts. 12, 18. Plaintiff has filed a motion for leave to file a third amended complaint, dkt. 38. Plaintiff's motion is **granted**. The clerk is directed to docket the exhibit at docket [38-1] as the Third Amended Complaint.

I. Screening of Third Amended Complaint

The Court now proceeds to screen the Third Amended Complaint. 28 U.S.C. § 1915A. The Court incorporates the facts as discussed in its order screening Plaintiff's amended complaint, dkt. 12. In short, Plaintiff alleges that the Defendants' deliberate indifference resulted in delayed treatment of an abdominal abscess that ultimately required emergency surgery at an outside facility, Union Hospital.

Plaintiff's Third Amended Complaint alleges that Nurse Janet Robinson, Nurse Hanna Sparks, and the (unnamed) Centurion Medical Director at Wabash Valley repeatedly pressured Union Hospital to return Plaintiff to Wabash Valley before his needed surgery and treatment there were complete. Plaintiff also alleges that although the Union Hospital surgeon directed that he be on antibiotics for 14 days after his return to Wabash Valley, Robinson, Sparks, and the Medical Director only provided them for 7 days. He also alleges that Robinson and Sparks did not change his surgical dressing or clean the surgical site for 7 days after his return to Wabash Valley, despite the surgeon ordering that the site be cleaned daily. He does not allege that his return to Wabash Valley actually was rushed because of these proposed defendants' actions, nor that he suffered an infection, other complications, or pain and suffering as a result of their actions.

Plaintiff also alleges in the Third Amended Complaint that Daniel Bedwell, the Aramark food service supervisor at Wabash Valley, failed to comply with doctors' orders regarding Plaintiff's post-surgical dietary needs. Plaintiff claims that as a result, he suffered pain and risked damage to his resected colon, and also had to purchase food for himself from the commissary to supplement his diet.

II. New Claim that Shall Proceed

The new claim against Daniel Bedwell is a viable Eighth Amendment deliberate indifference claim. Accordingly, that claim **shall proceed** against Daniel Bedwell. The **clerk is directed** to add Daniel Bedwell as a defendant on the docket and issue process to him pursuant to Fed. R. Civ. P. 4(c)(3). Process shall consist of the Third Amended Complaint, dkt. [38-1], the Court's original screening order, dkt. [12], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order.

III. New Claims that Are Dismissed

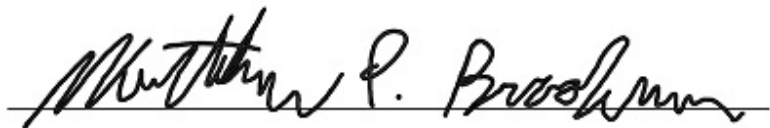
The new claims against Nurses Robinson and Jackson and the Centurion Medical Director **shall not proceed**. The allegations as to these persons do not identify an actionable infringement of any federally secured right. "[N]ot everything that is undesirable, annoying, or even harmful amounts to a violation of the law, much less a constitutional problem." *Brown v. Chicago Board of Education*, 824 F.3d 713, 714 (7th Cir. 2016). *See also Brandt v. Bd. of Educ. of City of Chi.*, 480 F.3d 460, 465 (7th Cir. 2007) ("[D]e minimis non curat lex (the law doesn't concern itself with trifles) is a doctrine applicable to constitutional as to other cases"). "In order to succeed in a § 1983 suit, a plaintiff must establish not only that a state actor violated his constitutional rights, but also that the violation caused the plaintiff injury or damages." *Gabb v. Wexford Health Sources, Inc.*, 945 F.3d 1027, 1033 (7th Cir. 2019). Although Plaintiff alleges undesirable conduct by Nurses Robinson and Jackson and the Centurion Medical Director, he does not allege that it resulted in any injury to him.

IV. Conclusion

Plaintiff's motion to file an amended complaint, dkt. [38], is **granted**. The Third Amended Complaint, dkt. [38-1], is now the operative complaint, and Eighth Amendment deliberate indifference claims are proceeding against (1) Dr. Samuel Byrd; (2) Nurse Chelsea Pearson; (3) Nurse Barbara Riggs; (4) Nurse Leann Murry; (5) Nurse Emily Enriquez; (6) Nurse Kayla Kellums; and (7) Daniel Bedwell. The motion for summary judgment, dkt. 44, filed by Defendants Byrd, Pearson, Riggs, Murry, Enriquez, and Kellums remains under advisement.

IT IS SO ORDERED.

Dated: January 29, 2024

A handwritten signature in black ink, reading "Matthew P. Brookman", written over a horizontal line.

Matthew P. Brookman, Judge
United States District Court
Southern District of Indiana

Distribution:

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